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of the State of California
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4 California Department of Justice
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8 Attorneys for Complainant

10 **BEFORE THE**
11 **BOARD OF REGISTERED NURSING**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

14 PATRICIA ANN MILLER, a.k.a.
15 PATRICIA NOREEN MILLER
7055 Tait Street
San Diego, CA 92111

16 Registered Nurse License No. RN#436004

17 Respondent.

Case No. 2007-271

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

19 **FINDINGS OF FACT**

20 1. On or about April 16, 2007, Complainant Ruth Ann Terry, M.P.H., R.N.
21 ("Complainant"), in her official capacity as the Executive Officer of the Board of Registered
22 Nursing, Department of Consumer Affairs, filed Accusation No. 2007-271 against PATRICIA
23 ANN MILLER, a.k.a. PATRICIA NOREEN MILLER (Respondent) before the Board of
24 Registered Nursing.

25 2. On or about February 28, 1989, the Board of Registered Nursing (Board)
26 issued Registered Nurse No. RN#436004 to Respondent. The Registered Nurse was in full force
27 and effect at all times relevant to the charges brought herein and expired on September 30, 2006.

28 ///

1 3. By order effective January 10, 1997, the Board ordered Respondent's
2 nursing license revoked, stayed the revocation, suspended Respondent from practicing as a
3 registered nurse for ninety (90) days, and placed Respondent on probation for three years.
4 Respondent successfully completed that probation on January 9, 2000.

5 4. On or about June 6, 2007, Sandra Sotelo, an employee of the Department
6 of Justice, served by Certified and First Class Mail a copy of the Accusation No. 2007-271,
7 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code
8 sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which
9 was and is 7055 Tait Street, San Diego, California 92111. A copy of the Accusation, the related
10 documents, and Declaration of Service are attached as Exhibit A, and are incorporated herein by
11 reference.

12 5. Service of the Accusation was effective as a matter of law under the
13 provisions of Government Code section 11505, subdivision (c).

14 6. On or about June 19, 2007, the aforementioned documents were returned
15 by the U.S. Postal Service marked "Forwarding Order Expired." Copies of the envelopes
16 returned by the post office are attached as Exhibit B, and are incorporated herein by reference.

17 7. Government Code section 11506 states, in pertinent part:

18 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
19 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
20 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
21 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

22 8. Respondent failed to file a Notice of Defense within 15 days after service
23 upon her of the Accusation, and therefore waived her right to a hearing on the merits of
24 Accusation No. 2007-271.

25 9. California Government Code section 11520 states, in pertinent part:

26 "(a) If the respondent either fails to file a notice of defense or to appear at the
27 hearing, the agency may take action based upon the respondent's express admissions or
28 upon other evidence and affidavits may be used as evidence without any notice to respondent."

1 10. Pursuant to its authority under Government Code section 11520, the Board
2 finds Respondent is in default. The Board will take action without further hearing and, based on
3 Respondent's express admissions by way of default and the evidence before it, contained in
4 Exhibits A, B and C, finds that the allegations in Accusation No. 2007-271 are true.

5 11. The total costs for investigation and enforcement are \$3,357.50 as of June
6 19, 2007.

7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent PATRICIA MILLER,
9 RN has subjected her Registered Nurse No. RN 436004 to discipline.

10 2. A copy of the Accusation and the related documents and Declaration of
11 Service are attached.

12 3. The agency has jurisdiction to adjudicate this case by default.

13 4. The Board of Registered Nursing is authorized to revoke Respondent's
14 Registered Nurse based upon the following violations alleged in the Accusation:

15 a. Business and Professions Code sections 490 and 2761(f) for her
16 conviction of Penal Code section 487 (grand theft), a misdemeanor, based on her plea of
17 *nolo contendere* on or about August 29, 2006, in the case captioned *People vs. Patricia*
18 *Ann Miller*, San Diego Superior Court Case No. M-986-106;

19 b. Business and Professions Code sections 490 and 2761(f) for her
20 conviction of Penal Code section 487(a) (grand theft), a felony, based on her plea of
21 guilty on or about December 5, 2005, in the case captioned *People vs. Patricia Ann*
22 *Miller*, San Diego Superior Court Case No. SCD191513;

23 c. Business and Professions Code sections 490 and 2761(f) for her
24 conviction of Penal Code sections 666, 484(a), and 488 (petty theft with a prior),
25 misdemeanors, based on her plea of no contest on or about December 16, 2004, in the
26 case captioned *People vs. Patricia Ann Miller*, San Diego Superior Court Case No. M-
27 939760; and

28 ///

1 d. Business and Professions Code sections 490 and 2761(f) for her
2 conviction of Penal Code section 484(a)/488 (petty theft with a prior conviction), a
3 misdemeanor, based on her plea of nolo contendere on or about January 3, 2001, in the
4 case captioned *People vs. Patricia A. Miller*, San Diego Superior Court Case No.
5 M816109.

6 ORDER

7 IT IS SO ORDERED that Registered Nurse No. RN 436004, heretofore issued to
8 Respondent PATRICIA MILLER, RN, is revoked.

9 Pursuant to Government Code section 11520, subdivision (c), Respondent may
10 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
11 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
12 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
13 statute.

14 This Decision shall become effective on October 1, 2007.

15 It is so ORDERED August 30, 2007

16 *La Francine W Tate*

17 FOR THE BOARD OF REGISTERED NURSING
18 DEPARTMENT OF CONSUMER AFFAIRS

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21 80141980.wpd

22 DOJ docket number:SD2006801068

23 Attachments:

24 Exhibit A: Accusation No.2007-271, Related Documents, and Declaration of Service
25 Exhibit B: Copies of the Envelopes Returned by Post Office
26 Exhibit C: Certification of Costs: Declaration of Antoinette Cincotta
27
28

Exhibit A

Accusation No. 2007-271,
Related Documents and Declaration of Service

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 LINDA SCHNEIDER
Supervising Deputy Attorney General
3 ANTOINETTE B. CINCOTTA, State Bar No. 120482
Deputy Attorney General
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8 Attorneys for Complainant
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10 **BEFORE THE**
11 **BOARD OF REGISTERED NURSING**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 2007-271

14 PATRICIA ANN MILLER, a.k.a.
15 PATRICIA NORREEN MILLER
7055 Tait Street
San Diego, CA 92111

ACCUSATION

16 Registered Nurse License No. RN#436004

17 Respondent.
18

19 Complainant alleges:

20 **PARTIES**

21 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation
22 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
23 Department of Consumer Affairs.

24 2. On or about February 28, 1989, the Board of Registered Nursing issued
25 Registered Nurse License No. RN#436004 to PATRICIA ANN MILLER, a.k.a. PATRICIA
26 NORREEN MILLER (Respondent). The registered nurse license was in full force and effect at
27 all times relevant to the charges brought herein and expired on September 30, 2006.

28 ///

3. By order effective January 10, 1997, the Board ordered Respondent's nursing license revoked, stayed the revocation, suspended Respondent from practicing as a registered nurse for ninety (90) days, and placed Respondent on probation for three years. Respondent successfully completed that probation on January 9, 2000.

JURISDICTION

4. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

□ ◆ ◆ ◆

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

7. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

8. California Code of Regulations, title 16, section 1444, states:

"A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

1 ". . . .

2 "(c) Theft, dishonesty, fraud, or deceit."

3 9. Section 118 of the Code states in relevant part:

4 ". . . .

5 "(b) The suspension, expiration, or forfeiture by operation of law of a license
6 issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the
7 board or by order of a court of law, or its surrender without the written consent of the board, shall
8 not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the
9 board of its authority to institute or continue a disciplinary proceeding against the licensee upon
10 any ground provided by law or to enter an order suspending or revoking the license or otherwise
11 taking disciplinary action against the licensee on any such ground."

12 10. Section 118, subdivision (b), of the Code provides that the expiration of a
13 license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the
14 period within which the license may be renewed, restored, reissued or reinstated.

15 11. Section 490 of the Code states:

16 "A board may suspend or revoke a license on the ground that the licensee has been
17 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties
18 of the business or profession for which the license was issued. A conviction within the meaning
19 of this section means a plea or verdict of guilty or a conviction following a plea of nolo
20 contendere. Any action which a board is permitted to take following the establishment of a
21 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has
22 been affirmed on appeal, or when an order granting probation is made suspending the imposition
23 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
24 Penal Code."

25 12. Section 493 of the Code states:

26 "Notwithstanding any other provision of law, in a proceeding conducted by a
27 board within the department pursuant to law to deny an application for a license or to suspend or
28 revoke a license or otherwise take disciplinary action against a person who holds a license, upon

1 the ground that the applicant or the licensee has been convicted of a crime substantially related to
2 the qualifications, functions, and duties of the licensee in question, the record of conviction of the
3 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
4 and the board may inquire into the circumstances surrounding the commission of the crime in
5 order to fix the degree of discipline or to determine if the conviction is substantially related to the
6 qualifications, functions, and duties of the licensee in question.

7 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
8 'registration.'"

9 13. Section 125.3 of the Code provides, in pertinent part, that the Board may
10 request the administrative law judge to direct a licensee found to have committed a violation or
11 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
12 and enforcement of the case.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(August 29, 2006 Criminal Conviction - Grand Theft on December 9, 2005)**

15 14. Respondent is subject to disciplinary action under sections 490 and
16 2761(f) in that she was convicted of a crime which is substantially related to the qualifications,
17 functions or duties of a registered nurse. The circumstances are as follows:

18 15. On or about August 29, 2006, in the case captioned *People vs. Patricia*
19 *Ann Miller*, San Diego Superior Court Case No. M-986106, Respondent was convicted of a
20 violation of Penal Code section 487 (grand theft), a misdemeanor, based on her plea of nolo
21 contendere.

22 16. The facts giving rise to this conviction are as follows. On or about
23 December 9, 2005, four days after she was convicted of petty theft for shoplifting at Robinson
24 May in San Diego, Respondent shoplifted a purse from Neiman Marcus in San Diego, California.
25 Respondent told the arresting police officer that stealing makes her feel better. Respondent
26 initially also told the arresting officer that the license, check book and nurse identification card
27 she had with the name "Patricia Ann Miller" were not hers and belonged to a friend. Respondent
28 then admitted the items were hers. Respondent explained that she tried to use another name

1 because she is awaiting sentencing on another theft-related arrest.

2 17. Respondent was placed on probation for three years, ordered to serve one
3 day in custody, and pay a fine of \$854.00.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(December 5, 2005 Criminal Conviction - Grand Theft on June 8, 2005)**

6 18. Respondent is subject to disciplinary action under sections 490 and
7 2761(f) in that she was convicted of a crime which is substantially related to the qualifications,
8 functions or duties of a registered nurse. The circumstances are as follows:

9 19. On or about December 5, 2005, in the case captioned *People vs. Patricia*
10 *Ann Miller*, San Diego Superior Court Case No. SCD191513, Respondent was convicted of a
11 violation of Penal Code section 487(a) (grand theft), a felony, based on her plea of guilty.

12 20. The facts giving rise to this conviction are as follows. On or about June 8,
13 2005, Respondent shoplifted jewelry consisting of bracelets, rings, earrings, and a necklace from
14 Robinson May. Respondent told the arresting police officer that her name was really "Ann
15 Davidoski," and the identifying information in her purse was that of her twin sister. Respondent
16 admitted to the arresting police officer that she stole the merchandise, but that it was the first
17 time she has ever done anything like this. In fact, Respondent had previously served one day of
18 confinement for a theft related offense on September 15, 2004.

19 21. Respondent was placed on probation for three years, ordered to serve 365
20 days custody with the court staying the custody time to 275 days, ordered to pay a fine of
21 \$239.00, and to pay a restitution fine of \$200.00.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(December 16, 2004 Criminal Conviction - Petty Theft on September 15, 2004)**

24 22. Respondent is subject to disciplinary action under sections 490 and
25 2761(f) in that she was convicted of a crime which is substantially related to the qualifications,
26 functions or duties of a registered nurse. The circumstances are as follows:

27 23. On or about December 16, 2004, in the case captioned *People vs. Patricia*
28 *Ann Miller*, San Diego Superior Court Case No. M-939760, Respondent was convicted of

violations of Penal Code sections 666, 484(a), and 488 (petty theft with a prior), a misdemeanor, based on her plea of no contest.

24. The facts giving rise to this conviction are as follows. On or about September 15, 2004, Respondent shoplifted jewelry and a handbag from Robinson May in San Diego, California.

25. Respondent was placed on probation for three years, ordered to serve one day in custody, and ordered to pay a fine of \$578.

FOURTH CAUSE FOR DISCIPLINE

(January 3, 2001 Criminal Conviction - Petty Theft on November 22, 2000)

26. Respondent is subject to disciplinary action under sections 490 and 2761(f) in that she was convicted of a crime which is substantially related to the qualifications, functions or duties of a registered nurse. The circumstances are as follows:

27. On or about January 3, 2001, in the case captioned *People vs. Patricia A. Miller*, San Diego Superior Court Case No. M816109, Respondent was convicted of one count of a violation of Penal Code sections 484(a)/488 (petty theft with a prior conviction), a misdemeanor, based on her plea of nolo contendere.

28. The facts giving rise to this conviction are as follows. On or about November 22, 2000, Respondent shoplifted from Neiman Marcus in San Diego, California.

29. Respondent was placed on probation for three years, ordered to serve one day in custody, ordered to pay a fine of \$300.00, ordered to pay a restitution fine of \$100.00, ordered to pay a \$25.00 counseling fee, and ordered to have no contact, direct or indirect, with Neiman Marcus in San Diego, California.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:


1. Revoking or suspending Registered Nurse License Number RN#436004, issued to Patricia Miller.

///

1 2. Ordering Patricia Miller to pay the Board of Registered Nursing the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code section 125.3; and

4 3. Taking such other and further action as deemed necessary and proper.
5

6 DATED: 4/16/07
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9 
10 Ruth Ann Terry, M.P.H., R.N.
11 Executive Officer
12 Board of Registered Nursing
13 Department of Consumer Affairs
14 State of California
15 Complainant
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DECLARATION OF SERVICE

(Certified & First Class Mail (separate mailing))

In the Matter of the Accusation Against:
Miller, Patricia, R.N.

Board of Registered Nursing Case No. 2007-271

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 110 West "A" Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266

I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On June 6, 2007, I served the attached **STATEMENT TO RESPONDENT; ACCUSATION; NOTICE OF DEFENSE (2 copies); REQUEST FOR DISCOVERY; DISCOVERY STATUTES; & DISCIPLINARY GUIDELINES** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the **STATEMENT TO RESPONDENT; ACCUSATION; NOTICE OF DEFENSE (2 copies); REQUEST FOR DISCOVERY; DISCOVERY STATUTES; & DISCIPLINARY GUIDELINES** was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General, addressed as follows:

Patricia Ann Miller
7055 Tait Street
San Diego, CA 92111

Certified Article Number

7160 3901 9845 0146 9140

SENDERS RECORD

Certified Article No.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 6, 2007, at San Diego, California.

S. Sotelo

Typed Name



Signature

Exhibit B

Copies of Envelopes Returned by Post Office

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RETURN RECEIPT REQUESTED

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Patricia Ann Miller
7055 Tait Street
San Diego, CA 92111

ANTONETTE B. CINCOTTA
STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
OFFICE OF ATTORNEY GENERAL
110 WEST A STREET SUITE 1100
P.O. BOX 85266
SAN DIEGO CA 92186-5266



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FINDINGS OF FACT

I

On April 16, 1996, Ruth Ann Terry, R.N., M.P.H., in her official capacity as the Executive Officer, Board of Registered Nursing, Department of Consumer Affairs, signed the Accusation.

II

On February 28, 1989, the Board issued respondent Registered Nursing License No. 436004. Respondent's license expires on September 30, 1996, unless suspended or revoked.

Respondent's California nursing license has never been subject to any prior disciplinary action.

Respondent also holds New Jersey Registered Nursing License No. 70233, Arizona Registered Nursing License 064662, Florida Nursing License No. 1453052, Hawaii Registered Nursing License No. 30438, Texas Nursing License No. 4060676, and Louisiana Registered Nursing License No. 72326.

Respondent's nursing licenses issued by jurisdictions other than California have never been suspended, revoked, or subject to any disciplinary action. Most of those licenses are now inactive.

III

Respondent is thirty-nine years old. She grew up on the East Coast. On May 24, 1979, she graduated from Rutgers College of Nursing, Newark, New Jersey.

Respondent worked as a registered nurse in a New Jersey hospital for approximately a year after she was first licensed.

From 1980 through 1987, respondent, whose parents lived in Florida, worked off and on as a registered nurse in various communities on the East Coast and in Florida, primarily in hospital settings.

In 1987, respondent became employed as a traveling nurse because that position enabled her to travel and reside in different areas of the United States. Respondent worked for several traveling nurse agencies providing nursing services throughout the United States.

In 1991 through 1993, respondent worked in Texas as a registered nurse.

From 1988 through 1990, respondent worked in Hawaii as a registered nurse.

In 1993, respondent worked in Arizona as a registered nurse.

From 1992 through 1994, respondent worked in Louisiana as a registered nurse. During this period, respondent was employed briefly by the Ochsner Foundation Hospital in New Orleans.

In 1994, respondent began living and working in Southern California.

IV

Respondent now admits having alcohol problems ever since she was a teenager. While respondent denies she has practiced nursing while under the influence of alcohol, she admits her alcoholism resulted in instances of absenteeism and in a confrontation with at least one of her nursing supervisors.

In 1987, respondent was involuntarily terminated from a nursing registry because of her absenteeism. Respondent did not show up to work if she was hung over or if she felt any care she might provide to patients could be impaired by her recent use of alcohol.

In 1987, respondent was convicted in Florida of driving under the influence of alcohol. As a part of her criminal sentence, respondent was ordered to attend and participate in at least three Alcoholic Anonymous meetings. Respondent did no more than the minimum required of her by the court. She did not continue to participate in the AA program and she did not consider herself, at that time, to have alcohol-related problems.

Respondent was involuntarily terminated from the Ochsner Foundation Hospital in New Orleans in 1990 as a result of her inability to get along with her supervisor. In part, this was due to respondent's excessive absenteeism.

Respondent did not acknowledge the extent of her alcohol problem until her arrest for driving under the influence of alcohol and battery on March 3, 1994. Some of the facts and circumstances surrounding those offenses are set forth in Finding of Fact VI.

V

On July 8, 1994, respondent was convicted, in the Municipal Court of California, County of San Diego, San Diego

Judicial District, in Case No. M-680119, on her plea of guilty, of driving a motor vehicle while under the influence of an alcoholic beverage, in violation of Penal Code section 23152(a), and for the unlawful use of force upon a person respondent knew was a peace officer, in violation of Penal Code section 242/243(b). Respondent stipulated her blood-alcohol level was .22% by weight in her blood at the time of her arrest.

Respondent was placed on three years probation to the court on condition that she pay fines and a penalty assessment. Other conditions of respondent's probation required her to attend and complete a substance abuse program, not drive a motor vehicle with any measurable alcohol in her system, submit to any test to detect alcohol in her system at the request of a peace officer, not drive without a valid driver's license and insurance, not violate any laws, and complete the MADD program.

VI

Respondent was arrested March 17, 1994, at 1:20 a.m., at Sixth Avenue near its intersection with Elm Street, in San Diego. Respondent was observed driving the wrong direction on Elm Street, a one-way street. Respondent was, according to the arresting officer, obviously intoxicated. In the course of her arrest, Miller was extremely abusive and attempted to kick the arresting officer several times.

VII

Respondent realized after her March 1994 arrest she had a serious drinking problem. Over the next twenty-seven months, respondent learned just how serious her addiction was.

Respondent was abstinent from fall 1994, when she began attending Alcoholic Anonymous, through May 1995.

In May 1995, she learned of the Board's investigation. Respondent began drinking again.

In September 1995, respondent again became abstinent. She remained abstinent through April 1996.

In April 1996, respondent learned an Accusation would be filed. She began drinking again and continued drinking until August 21, 1996, when she had her last alcoholic beverage, within a week of the administrative hearing.

Respondent was painfully candid in describing her efforts to overcome her addiction and to continue practicing nursing, a profession she cherishes and the only livelihood she has known. Respondent did not, as so many do, mouth platitudes about the benefits of recovery and cast herself as a victim;

rather, respondent convinced all those present at the hearing that she perceives this to be her final opportunity to salvage a worthy professional career.

In aggravation, respondent has had a serious alcohol problem for more than a decade, has denied having it until 1994, admitted an alcohol problem in 1994, but has been unable to fully overcome her alcohol problem since then.

In mitigation, no evidence suggests respondent has practiced nursing while under the influence of alcohol or has engaged in any misconduct resulting in improper patient care.

VIII

It was not established by clear and convincing evidence that respondent failed to report her change of address from 5419 West Tropicana Avenue, Phase 1, No. 2606, Las Vegas, Nevada 89103, to 940-B Orpeus Avenue, Leucadia, CA 92024, to the Board within thirty days, as is required by Title 16, California Code of Regulations, section 1409.1.

IX

The licensing laws are designed to protect consumers of nursing services from unsafe, incompetent, and/or negligent registered nurses. The licensing laws do not exist to provide a vehicle by which a dangerous practitioner can rehabilitate himself or herself. The Board's paramount interest is the safety of the public.

There is no record of any prior disciplinary record against any registered nursing license issued to respondent by this or any other jurisdiction. There is no record of any warnings. Apart from her absenteeism, which related to her alcohol problem, there is no evidence respondent ever provided anything other than competent nursing services to patients.

The conduct under consideration relates to respondent's alcoholism and two crimes arising out of her abuse of alcohol in March 1994 while she was away from work. It is fortunate no one was injured when respondent drove her car the wrong way on a one-way street. Respondent was abusive in the extreme to the arresting officer, who was simply trying to do his job.

Respondent's prior conviction for driving under the influence in Florida in 1987 was not alleged, but respondent admitted suffering that conviction in describing her alcohol-related problem and her as yet unsuccessful efforts to overcome that problem.

In the past two years, respondent made conscious efforts to rehabilitate herself, some of which failed and some of which succeeded. The record of respondent's rehabilitation is still being written.

The most important factor in reaching a decision in this matter was respondent's own testimony. No writing can describe the candor and the pain in which respondent acknowledged the depth of her alcohol-related problem, her appreciation that this will likely be her last chance to retain her license, and the sincerity of her promise to never again consume an alcoholic beverage.

Respondent's credible, moving testimony, coupled with the lack of evidence establishing her mistreatment of any patient, obliged all participants to the administrative hearing to take yet another risk on respondent's recovery; if she fails to keep her promise to remain sober, no further promise she makes will ever be believed. Respondent can be assured if she fails to maintain her sobriety, she will likely never be licensed as a registered nurse in the State of California again.

Considering the totality of the evidence, it was not established by clear and convincing evidence that respondent is not capable of safe practice if stringent terms and conditions of probation are imposed, including a brief suspension from the practice of nursing during which respondent must complete an approved residential rehabilitation/therapy program, an approach to sobriety she has not yet attempted.

Respondent contends she does not have sufficient assets to afford an inpatient rehabilitation/therapy program. It is not an issue of rich or poor - it is an issue of respondent gaining sobriety, remaining sober, and never posing any risk to the public in her capacity as a registered nurse because of her alcoholism.

X

No evidence was introduced to support the Board's requests for costs.

DETERMINATION OF ISSUES

I

Cause exists to suspend or revoke respondent's license under Business and Professions Code section 2761(a) on the grounds of unprofessional conduct, as defined by section 2762(c), which was stipulated to be adversely related to the qualifications, functions, and duties of a registered nurse, in that respondent was convicted of driving under the influence of

an alcoholic beverage and committed a battery upon a peace officer, based on Findings of Fact V and VI.

II

Cause does not exist to suspend or revoke respondent's license under Title 16, California Code of Regulations, section 1409.1, based on Findings of Fact VIII, as it was not established respondent failed to report her change of address from 5419 West Tropicana Avenue, Phase 1, No. 2606, Las Vegas, Nevada 89103, to 940 -B Orpeus Avenue, Leucadia, CA 92024, to the Board within thirty days.

III

Cause exists to suspend or revoke respondent's license under Business and Professions Code section 2761(f) on the grounds of potential unfitness on the part of respondent to perform the functions authorized by her license in a manner consistent with the public health, safety, and welfare, based on respondent's long history of alcohol abuse, her criminal convictions related to her consumption of alcohol, and her short history of having great difficulty in rehabilitating herself, based on Findings of Fact IV, V, VI, and VII.

IV

Cause exists to suspend or revoke respondent's license under Business and Professions Code section 2761(a) on the grounds of unprofessional conduct, as defined by section 2762(b), which was stipulated to be adversely related to the qualifications, functions, and duties of a registered nurse, in that respondent's conviction of driving under the influence of an alcoholic beverage and battering a peace officer constituted conduct which was dangerous to herself and others, based on Findings of Fact V and VI.

V

Cause exists to suspend or revoke respondent's license under Business and Professions Code section 490 on the grounds respondent was convicted of crimes substantially and adversely related to the qualifications, functions, or duties of a registered nurse, which the parties stipulated was adversely related to the qualifications, functions, and duties of a registered nurse, in that respondent was convicted of driving under the influence of an alcoholic beverage and of battering a peace officer, based on Findings of Fact V and VI.

VI

Cause does not exist under Business and Professions Code section 125.3 to award costs as no evidence of the Board's costs of investigation and prosecution was introduced, based on Finding of Fact X.

VII

The Board of Registered Nursing adopted recommended guidelines to be followed in instances in which violations of the Nursing Practice Act exist. These guidelines were adopted to protect consumers of nursing services from unsafe, incompetent and/or negligent registered nurses. The guidelines were considered in the preparation of the disciplinary order.

It was not established by clear and convincing evidence that respondent is not capable of safe practice. For this reason, the outright revocation of respondent's license is not warranted. Because respondent has demonstrated a capacity to practice safe nursing, the imposition of a stayed revocation with stringent terms and conditions of probation is warranted.

An actual suspension of respondent's license is designed to enable respondent to attend and complete a residential rehabilitation/therapy program, to seek employment in a well supervised setting, to establish her participation in a 12-step recovery program, and to enable her to be fully advised by the Board of its probation program.

This determination is based on Finding of Fact VII and IX.

ORDER

Registered Nurse License No. 436004, issued to respondent Patricia A. Miller, is hereby revoked; provided, however, the revocation of respondent's license is stayed, and respondent's license is placed on three year's probation on the following terms and conditions:

- (1) ACTUAL SUSPENSION OF LICENSE - As part of probation, respondent is suspended from the practice of nursing for ninety (90) days, with the suspension beginning on the effective date of this decision. Respondent shall inform her current employers of the Board's decision, the reasons for and the length of her suspension by providing her employers with a copy of the Board's Decision and Order. Before respondent's suspension terminates, respondent shall provide documentation of completion of her residential rehabilitation/therapy program to the Board.

(2) OBEY ALL LAWS - Respondent shall obey all federal, state and local laws, and all rules and regulations of the Board of Registered Nursing governing the practice of nursing in California. A full and detailed account of any and all violations of law shall be reported by respondent to the Board in writing within seventy-two (72) hours of any occurrence. To permit monitoring of compliance with this term, respondent shall submit completed fingerprint cards and fees within ninety (90) days of the effective date of the decision, unless she previously submitted completed fingerprint cards and fees as part of the licensure application process.

(3) COMPLY WITH PROBATION PROGRAM - Respondent shall fully comply with the terms and conditions of the Board's Probation Program and cooperate with representatives of the Board in monitoring and investigating respondent's compliance with the Program. Respondent shall inform the Board in writing within fifteen (15) days of any change in her residence or business address and she shall at all times maintain an active, current licensed status with the Board, including the period of suspension.

(4) PHYSICAL EXAMINATION - Respondent, at her expense, shall, within forty-five (45) days of the date she completes her residential rehabilitation/therapy program, have a licensed physician submit, in a format acceptable to the Board, an assessment of the respondent's physical condition and her present ability to perform the duties of a professional registered nurse. If medically determined, a continuing recommended treatment program will be instituted and followed by respondent with the physician providing written reports to the Board on forms provided by the Board.

(5) PARTICIPATE IN RESIDENTIAL REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE - Respondent, at her expense, shall successfully complete or shall have successfully completed a residential rehabilitation/therapy program approved by the Board for substance abuse of at least thirty (30) days duration. Reports shall be submitted by the program on forms provided by the Board. If respondent fails to complete a residential rehabilitation/therapy program within ninety (90) days of the effective date of this Decision, the Board will consider respondent to be in violation of this disciplinary order and may initiate further disciplinary action against respondent's license in its sole discretion.

In addition, during the period respondent's license is on probation, respondent must attend two 12-step recovery meetings per week (e.g., Alcoholic Anonymous, etc.) and a nurse support group as directed by the Board. If a nurse support group is not available, an additional 12-step meeting must be added. Respondent must submit dated and signed documentation confirming such attendance to the Board during the entire period of probation.

(6) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS - Respondent shall completely abstain from the possession or consumption of all psychotropic (mood altering) drugs, including alcohol, except when lawfully prescribed by a licensed physician or dentist as part of respondent's documented medical or dental treatment. In connection with her consumption or use of any psychotropic drug as a part of a documented medical or dental treatment, respondent shall file with the Board, in writing and within fourteen (14) days after beginning such treatment, a written report signed by the prescribing physician or dentist identifying the medication, dosage, the date the medication was prescribed, respondent's prognosis, and the date respondent will no longer need to use the medication.

(7) SUBMIT TO TESTS AND SAMPLES - Respondent, at her expense, shall participate in a random, biological fluid testing or a drug screening program approved by the Board. The duration and frequency of the random testing will be subject to approval by the Board. Respondent shall advise the Board of her current telephone number at all times to ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the screening program and respondent will be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

(8) REPORT IN PERSON - Respondent shall appear in person at interviews/meetings as directed by the Board or its designated representatives during probation.

(9) ABSENCE FROM STATE - Any periods in which respondent resides or practices outside of California shall not reduce the probationary term. Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state.

(10) SUBMIT WRITTEN REPORTS - Respondent, during the period of probation, shall submit such written reports/declarations and verification of actions under penalty of perjury as are required. These declarations shall contain statements relating to respondent's compliance with all the terms and conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

(11) FUNCTION AS A REGISTERED NURSE - Under Business and Professions Code section 2732, no person shall engage in the practice of registered nursing without holding a license which is in an active status. Respondent, following her period of suspension and during the period of probation, shall engage in the practice of professional nursing in California for a minimum of twenty-four (24) hours per week (or for any other reasonable amount determined by the Board).

(12) NURSING PRACTICE - Respondent shall advise the Board and obtain the Board's approval of each agency for which the respondent provides nursing services before she commences work with such prospective employer. Respondent shall inform every prospective employer of the fact she is on probation the reason she is on probation, and the terms and conditions of her probation by providing a copy of the Board's Decision and Order to her prospective employer and to her immediate supervisor. Respondent's employer shall submit performance evaluations and other reports as requested by the Board.

Respondent shall also notify the Board in writing within seventy-two (72) hours of her termination from any nursing employment. Respondent's written notification concerning any termination of employment shall contain a full explanation of the circumstances surrounding her termination from employment.

(13) SUPERVISION - The Board shall be informed of and approve of the level of supervision provided to respondent while she functions as a registered nurse. The appropriate level of supervision must be approved by the Board before she commences work. Respondent

shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing.

(14) EMPLOYMENT LIMITATIONS - Respondent may not work for a nurse registry, for a temporary nurse agency, for a home care agency, at an in-house nursing pool, as a nursing supervisor, as a faculty member of an approved school of nursing, as a member of a traveling nurses association, or as an instructor in a Board approved continuing education program. Respondent must work at an approved, regularly assigned, identified, predetermined worksite(s) with appropriate supervision as approved by the Board.

(15) COMPLETE A NURSING COURSE(S) - Respondent, at her expense, shall successfully complete a course in nursing as directed by the Board before the end of her probationary term. The course shall be related to substance abuse.

Respondent may be suspended from practicing nursing until the necessary coursework is completed. The content of the course and the place and conditions of instruction shall be specified by Board representatives at the time of the initial probation meeting based on the nature of the violations giving rise to this order. The specific course must be approved before respondent enrolls. Respondent must submit written proof of enrollment and proof of successful completion. A transcript or certificate of completion must be mailed directly to the Board by the agency or entity instructing the respondent.

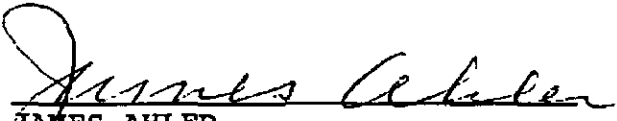
Home study or correspondence courses are not acceptable and shall not be approved.

(16) VIOLATION OF PROBATION - If respondent violates the conditions of her probation, the Board, after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed revocation of respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

(17) FULL RESTORATION OF LICENSE - Upon successful completion of probation, respondent's license will be fully restored.

Dated: 9-5-96.


JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings

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Attorneys for Complainant

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation) NO. 96-151
Against:)

PATRICIA A. MILLER) ACCUSATION
5419 West Tropicana Avenue)
Phase 1, No. 2606)
Las Vegas, Nevada 89103)
Registered Nurse License No. 436004)

Respondent.)

Ruth Ann Terry, R.N., M.P.H., for causes for
discipline, alleges:

1. Complainant Ruth Ann Terry, R.N., M.P.H., makes
and files this accusation in her official capacity as Executive
Officer, Board of Registered Nursing, Department of Consumer
Affairs.

/ / /

/ / /

1 2. On February 28, 1989, the Board of Registered
2 Nursing issued registered nurse license number 436004 to Patricia
3 A. Miller. The license was in full force and effect at all times
4 pertinent herein and has been renewed through September 30, 1996.

5
6 3. Under Business and Professions Code section 2750,
7 the Board of Registered Nursing may discipline any licensee,
8 including a licensee holding a temporary or an inactive license,
9 for any reason provided in Article 3 of the Nursing Practice Act.

10 Under Business and Professions Code section 2764, the
11 expiration of a license shall not deprive the board of
12 jurisdiction to proceed with a disciplinary proceeding against
13 the license or to render a decision imposing discipline on the
14 license.

15 Under Business and Professions Code section 490, the
16 Board of Registered Nursing may suspend or revoke a license when
17 it finds that the licensee has been convicted of a crime
18 substantially related to the qualifications, functions or duties
19 of a registered nurse.

20 Under Business and Professions Code section 125.3, the
21 Board may request the administrative law judge to direct a
22 licensee found to have committed a violation or violations of
23 the licensing act to pay a sum not to exceed the reasonable costs
24 of the investigation and enforcement of the case.

25
26 4. Respondent has subjected her license to discipline
27 under Business and Professions Code section 2761(a) on the

1 grounds of unprofessional conduct, as defined by section 2762(c)
2 of that code, in that on July 8, 1994, in the San Diego County
3 Municipal Court, San Diego Judicial District, (People v. Patricia
4 Ann Miller, Case No. M680119), she was convicted by the court on
5 her plea of guilty to a violation of Vehicle Code section
6 23152(a) (driving under the influence of alcohol/drugs), and
7 Penal Code sections 242-243(b) (battery upon a peace officer).

8 The circumstances of the crimes for which respondent
9 was convicted are that on or about March 17, 1994, she was
10 driving under the influence of alcohol, traveling in the wrong
11 direction on a one-way street, and when stopped by a San Diego
12 police officer she became belligerent and struck two police
13 officers, making threats to one as to what she would do to him if
14 he was ever a patient in the intensive care unit at Grossmont
15 Hospital where she was employed as a registered nurse.
16 Respondent had a blood alcohol level of .22 percent or higher.

17 Such conduct is substantially related to the
18 qualifications, functions or duties of a registered nurse, within
19 the meaning of Title 16, California Code of Regulations, section
20 1444.

21
22 5. Respondent has subjected her license to discipline
23 under Business and Professions Code section 2761(d) in that she
24 failed to report to the board her change of address from 5419
25 West Tropicana Avenue, Phase 1, No. 2606, Las Vegas, Nevada
26 89103, to 940-B Orpheus Avenue, Leucadia, California 92024,

27 / / /

1 within 30 days, as required by Title 16, California Code of
2 Regulations, section 1409.1.

3
4 6. Respondent has subjected her license to discipline
5 under Business and Professions Code section 2761(f) in that she
6 was convicted of offenses, as set forth in paragraph 4 above,
7 which are substantially related to the qualifications, functions
8 or duties of a registered nurse in that they evidence a present
9 or potential unfitness on the part of respondent to perform the
10 functions authorized by her license in a manner consistent with
11 the public health, safety, or welfare.

12
13 7. Respondent has subjected her license to discipline
14 under Business and Professions Code section 490 in that she was
15 convicted of crimes substantially related to the qualifications,
16 functions, or duties of a registered nurse as set forth in
17 paragraph 4 above.

18
19 8. Respondent has subjected her license to discipline
20 under Business and Professions Code section 2761(a) on the
21 grounds of unprofessional conduct, as defined by section 2762(b)
22 of that code, in that on or about March 17, 1994, she used
23 alcoholic beverages to such an extent or in a manner to be
24 dangerous or injurious to herself and others, as evidenced by the
25 facts set forth in paragraph 4 above.

26 / / /

27 / / /

WHEREFORE, complainant prays that a hearing be held and that the Board of Registered Nursing make its order:

1. Revoking or suspending registered nurse license number 436004, issued to Patricia A. Miller.

2. Ordering Patricia A. Miller to pay to the Board its costs and charges in investigating and enforcing the case according to proof at the hearing, pursuant to Business and Professions Code section 125.3.

3. Taking such other and further action as may be deemed proper and appropriate.

DATED: April 16, 1996

Ruth Ann Terry
RUTH ANN TERRY, R.N., M.P.H.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California

Complainant

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